Office of Chief Counsel Internal Revenue Service

memorandum

CC:LM:FSH:MAN:TL-N-3859-00

OSullivan

date:

to: Taxpayer Advocate Service

Attn: Pat Seagren, Associate Advocate, Holtsville, New York

from: Area Counsel, LM:FSH1:MAN

subject:

EIN:

Taxable Years Ended: December 31, December 31,

Forms: 1120 and 1042

Uniform Issue List # 6404.04-02, 6513.02-00, 6611.03-00

You asked for advice concerning the accrual of overpayment interest for the above listed taxpayer. Our advice relies on facts provided by Pat Seagren, Associate Advocate at the Taxpayer Advocate's Office. The advice rendered in this memorandum is conditioned on the accuracy of the facts provided to us.

Issue:

- 1. Whether the taxpayer is entitled to an abatement of interest assessed on an "erroneous refund."
- 2. Whether a credit balance of \$ on the scount for Form 1120 should be transferred to the taxpayer's account for Form 1120.
- 3. Whether the taxpayer is entitled to receive interest during the period through through

Conclusion:

- 1. No. The alleged "erroneous refund" issued on of \$ exceeds \$ which brings the refund outside of the relief provisions of I.R.C. \$ 6404(e)(2).
- 2. To the best of our knowledge, as of the writing of this

memorandum, s Form 1120 tax module does not have a credit balance of \$. Accordingly, this amount is not available to be carried over to s Form 1120 for

3. No, because the balance on which the taxpayer is requesting the accrual of overpayment interest is considered a payment of tax for the subsequent year under I.R.C. \$ 6513(d).

Facts:

(" "), files both Forms 1120, U.S. Corporation Income
Tax Return, and Forms 1042, Annual Withholding Tax Return for
U.S. Source Income of Foreign Persons, annually.

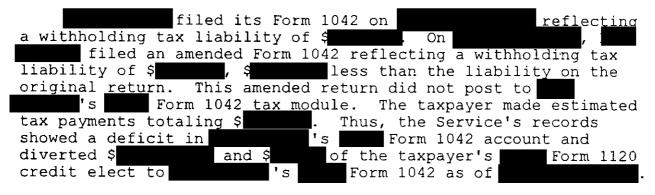
[EIN: "), the successor
corporation to as of filed the relevant tax
returns for and the subsequent years.

Form 1120

filed its corporate income tax return on reflecting a zero tax liability and a credit elect of \$ to be applied against its corporate income tax liability, which we confirmed by reviewing a copy of page 1 of the taxpayer's income tax return. Its Form 1120 tax module for reflects application of a \$ payment on the unextended due date of the unextended due date of the service then applied \$ as a correction to the account. The Service then applied \$ and \$ of the Form 1120 \$ overpayment to the account. The balance of the overpayment, \$ was applied to the due date of the first estimated tax installment payment for the due date of the first estimated tax installment payment for the service the service of the first estimated tax installment payment for the form 1120 account for the postings to the service tax liability as of the postings to the service tax liability as of the postings to the service tax liability as of the postings to the service tax liability as of the postings to the service tax liability as of the postings to the service tax liability as of the postings to the service tax liability as of the postings to the service tax liability as of the postings to the service tax liability as of the postings to the service tax liability as of the postings to the service tax liability as of the postings to the service tax liability as of the postings to the service tax liability as of the postings to the service tax liability as of the postings to the service tax liability as of the postings to the service tax liability as of the posting tax liability as of the post liabili

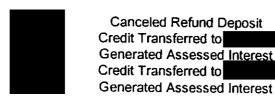
Cycle	Description	on Posted		Balance
	Tax return received Estimated Tax Payment Overpayment transferred Overpayment transferred Interest due on o/p Credit Elect transferred Overpayment under \$		\$ \$ \$ \$ \$ \$ \$ \$	- \$ - \$ -

Form 1042



Eventually, the Service realized that the amended return had not posted and the excess tax withholding of \$ was abated on . The Service then transferred the \$ credit in the taxpayer's Form 1042 account to 's Form 1120 tax account as of the Form 1120. This transaction is reversed as of . Eventually during the week of the Service transferred \$ to 's Form 1042 account. We did not receive any of the underlying documents for these transactions. Following is a table showing the postings to 's Form 1042 account for 's Form

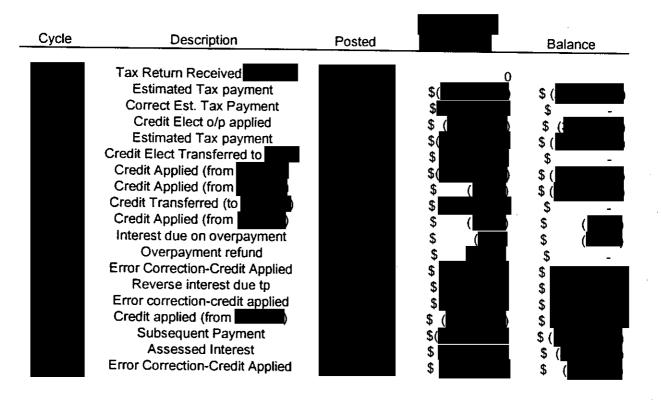
Cycle	Description	Posted	Balance
	Federal Tax Deposit Federal Tax Deposit Federal Tax Deposit Federal Tax Deposit FED Penalty Assessed Interest Overpayment applied from Overpayment applied from Overpayment applied from Abate FTP Penalty Abate Interest Abate Prior Tax Credit Transferred to Abate FTP Penalty Abate Assessed Interest Interest Due Overpayment Overpayment refund Reverse Credit Transfd to Overpayment refund Reverse Interest Due tp		* * * * * * * * * * * * * * * * * * *

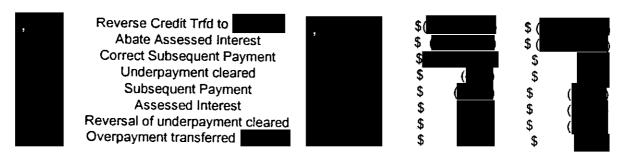




Form 1120

filed its Form 1120 on reporting a tax liability. As stated above the \$ was posted and then reversed out as an error. from remaining in the account after \$ Form 1042, was applied towards the Form 1120 tax liability. Since the income tax liability for was entire amount applied and prepaid was carried forward to corporation income tax liability. s As of credit was applied from the Form 1042 account. This credit plus \$ was then transferred to income tax account. However, after the transfer to income tax account, the Service reversed the application of the credit from the Form 1042 to this The taxpayer paid \$ on satisfy a liability. The Service erroneously posted it to The Service then corrected the error and account. transferred the payment to ____, leaving the ____ account with a Following is a table depicting the transactions to balance. this account:





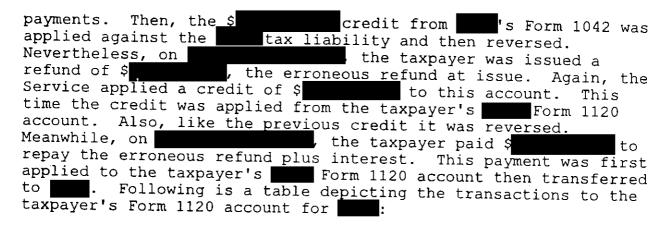
Form 1042

reflecting a liability of \$ which was fully paid. As of \$ had been credited from the taxpayer's Form 1042 account to this account. Since no tax was due for this account, the Service refunded this amount to the taxpayer plus interest. Following is a table depicting the transactions to this account:

Cycle	Description	Posted		Balance
	Return filed Federal Tax Deposit		***********	*******************************

Form 1120

's			by the Service on
	r <u>eflec</u> ting a	tax <u>liability</u>	of \$. The
taxpayer received a	refund	of \$	due to the credit
elect from the tax	payer's F	form 1120 plus	s estimated tax



Cycle	Description	Posted	Balance
	Tax return received Credit Elect Overpayment Applied Estimated Tax Payment Interest Due Taxpayer Refund prior to Settlement Credit Applied from Reverse Credit Applied error Interest Due Taxpayer Refund prior to Settlement Credit Applied from Subsequent Payment Correct Credit Applied Error Generated Assessed Interest Reverse Interest due Taxpayer Overpayment applied from		\$

Discussion:

Issue #1: Abatement of Interest on Erroneous Refund

Section 6404(e)(2) provides for the abatement of interest on erroneous refunds until the Service demands repayments. However, this relief is not available in cases in which the taxpayer causes the erroneous refund or the erroneous refund exceeds \$50,000. I.R.C. \$\$6404(e)(2).

T	he taxpayer!	claims that	_the Servi	ce erroneoi	ıslv refur	hahr
\$	on		from the	incon	ne tax mod	dule
On		, the taxp	aver made	a payment o	of S	
to rep	ay the erron	eous refund	plus inte	erest. The	taxpaver	seeks
reliei	of the \$	inte	rest paid	(\$		
ş). How	ever, since	the erron	eous refund	d exceeds	
\$, the taxpa	yer does no	t qualify	for an inte	erest abat	ement.

Issue #2 Transfer of Account Balance from to

The transcript dated shows a shows a balance in the taxpayer's account for . Accordingly, there is no credit to apply to as the taxpayer requests.

Issue #3 Accrual of Interest from through

Under Treas. Reg. § 301.6402-(3)(b)(6), the Service may credit an overpayment "against any outstanding liability for any tax...owed by the taxpayer making the overpayment, and only the balance, if any, shall be treated in the manner so elected."

Thus, the Service had authority to credit \$ of the overpayment, which the taxpayer elected to credit to its income tax liability, to the taxpayer's 1042 account. Once the Service corrected the \$ credit to the taxpayer's form 1042 account, the \$ credit to the taxpayer's status as an overpayment in which the taxpayer elected to carry forward to ...

According to the taxpayer's letter dated the taxpayer requests interest on the transfer from "

account from the date the credit is available, to the due date for the date the transfer originated as a portion of the taxpayer disregards that the transfer originated as a portion of the taxpayer disregards that the taxpayer elected to apply to its the estimated tax payment.

Interest is not recoverable on an obligation owed by the Government unless explicitly provided by statute or contract. Rosenman v. United States, 323 U.S. 658, 663 (1945). Section 6611(b)(1) provides that "interest shall be allowed and paid... [i]n the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken." Treasury Regulation section 301.6611-1(h)(2) provides that, in general, the term due date means "the last day fixed by law or regulations for the payment of the tax."

Section 6513(d) provides that if any overpayment of income tax is, in accordance with I.R.C. § 6402(b), claimed as a credit against estimated tax for the succeeding tax year, such amount shall be considered as a payment of income tax for the succeeding taxable year (whether or not claimed as a credit in the return of estimated tax for such succeeding taxable year) and no claim for credit or refund of such overpayment shall be allowed for the taxable year in which the overpayment arises. See also I.R.C. § 6513(a) which provides that a payment of income tax made before

the date prescribed for payment of the tax is considered paid on that date. The date prescribed for payment of tax is the time fixed for filing the return (determined without regard to any extension of time for filing the return). I.R.C. § 6151(c). Further, it is on this date that the overpayment is treated as a payment for purposes of computing interest on any overpayment of income taxes with respect to the succeeding year under I.R.C. § 6611(a) and (d).

The "overpayment" which the taxpayer elected to credit against its estimated tax installments for its tax liability would be considered a payment of income tax for under I.R.C. \$ 6513(d). No interest would accrue on the crediting of the "overpayment" to the estimated tax payments. The estimated tax payments would be deemed paid on the date prescribed for the payment of the taxpayer's tax liability, which is the due date of the taxpayer's income tax return. The date prescribed for the payment of the taxpayer's income tax liability without extension is Accordingly, the taxpayer is not entitled to interest on the credit elect prior to Overpayment interest does not accrue during the period of through as requested by the taxpayer.

If you have any questions about the above, please telephone Oleida Sullivan of our office at (212) 264-1595, extension 233.

ROLAND BARRAL Area Counsel (LMSB)

By:

PETER J. LABELLE Associate Area Counsel